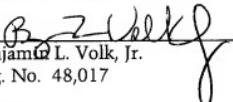


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being electronically filed with the United States Patent and Trademark Office via the EFS web on October 30, 2008.


Benjamin L. Volk, Jr.
Reg. No. 48,017

In re application of:
Ewing B. Gourley

Serial No.: 09/710,227 : Examiner: Porter, Rachel L.

Filed: November 10, 2000 : Group Art Unit: 3626

For: Method and Apparatus for Processing
Pharmaceutical Orders to Determine Whether
A Buyer of Pharmaceuticals Qualifies for an
"Own Use" Discount

Reply Brief Under 37 CFR 41.43(b)

In response to the "Examiner's Answer" dated September 18, 2008, Applicant submits the following as its Reply Brief pursuant to 37 CFR 41.43(b) in connection with the appeal of the above-referenced patent application.

*I. The "Examiner's Answer" dated September 18, 2008, is a
"Supplemental Examiner's Answer"*

The "Examiner's Answer" dated September 18, 2008 purports to be in response to Appellant's appeal brief filed February 14, 2008. (See "Examiner's Answer" of September 18, 2008; page 1) However, Applicant respectfully submits that the record shows this September 18, 2008 paper is in fact a "Supplemental Examiner's Answer" because it was issued by the Examiner after Appellant had already filed its Reply Brief to the Examiner's Answer of May 2, 2008. The timeline of filings in connection with this appeal is as follows:

- 02-14-2008 Amended Appeal Brief Filed
- 05-02-2008 Examiner's Answer Mailed
- 07-01-2008 Reply Brief Filed
- 09-18-2008 New "Examiner's Answer" Mailed

In view of the September 18, 2008 Examiner's Answer being issued by the USPTO over two months after Appellant had already filed its Reply Brief, Applicant respectfully submits that the Examiner's Answer dated September 18, 2008 must be treated as a Supplemental Examiner's Answer. Further supporting this interpretation of the record is the USPTO's Patent Application Information Retrieval (PAIR) system, which lists the September 18, 2008 Examiner's Answer as a "Supplemental Examiner's Answer" in the transaction history for this application. (See Exhibit 1 attached herewith).

II. USPTO Rules Prohibit the Entry of New Grounds of Rejection in a Supplemental Examiner's Answer

The Examiner improperly raised a new ground of rejection in the Supplemental Examiner's Answer, in violation of 37 CFR 41.43(a)(2). The new grounds of rejection begin on page 2 of the Supplemental Examiner's Answer, and consists of the rejection of multiple claims based on 35 USC 101. 37 CFR 41.43(a)(2) unequivocally states that "[a] supplemental examiner's answer responding to a reply brief may not include a new ground of rejection". As stated in MPEP 1207.05(l):

37 CFR 41.43(a)(2) prohibits a supplemental examiner's answer responding to a reply brief from including a new ground of rejection. After the filing of a reply brief, any new ground of rejection responding to a reply brief must be by way of reopening of prosecution." (See MPEP 1207.05(l); see also MPEP 1207.05(A) ("The examiner may NOT include a new ground of rejection in the supplemental examiner's answer responding to a reply brief." (emphasis in original))).

Because the Examiner's Answer dated September 18, 2008 must be deemed a Supplemental Examiner's Answer in response to Appellant's Reply Brief given that Appellant filed the Reply Brief over two months before the September 18, 2008 Examiner's Answer, Applicant

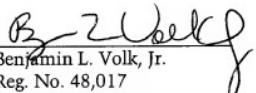
Application No. 09/710,227
Attorney Docket No. 66790-6411

respectfully submits that 37 CFR 41.43(a)(2) bars entry of the new grounds of rejection contained in the September 18, 2008 Examiner's Answer. Thus, for the reasons expressed herein, Applicant respectfully submits that the new grounds of rejection contained in the September 18, 2008 Examiner's Answer must be withdrawn and the appeal must move forward without such new grounds of rejection. Applicant also reserves the right to file a petition under 37 CFR 1.181 to request that the impermissible new ground of rejection be withdrawn. Favorable action is respectfully requested.

Respectfully submitted,

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09/710,227 Method and apparatus for processing pharmaceutical orders to determine whether 10-30-
a buyer of pharmaceuticals qualifies for an "own use" discount 2008::14:58:12

Transaction History

Date	Transaction Description
09-18-2008	Electronic Review
09-18-2008	Email Notification
09-18-2008	Mail Supplemental Examiner's Answer
09-15-2008	2nd or Subsequent Examiner's Answer to Appeal Brief
07-03-2008	Date Forwarded to Examiner
07-01-2008	Reply Brief Filed
05-06-2008	Electronic Review
05-05-2008	Exam. Ans. Review Complete
05-03-2008	Email Notification
05-02-2008	Mail Examiner's Answer
04-29-2008	Examiner's Answer to Appeal Brief
02-25-2008	Appeal Brief Review Complete
02-25-2008	Date Forwarded to Examiner
02-14-2008	Appeal Brief Filed
01-15-2008	Email Notification
01-14-2008	Notice -- Defective Appeal Brief
01-09-2008	Appeal Brief Review Complete
01-09-2008	Date Forwarded to Examiner
12-19-2007	Defective / Incomplete Appeal Brief Filed
12-19-2007	Appeal Brief Filed
11-21-2007	Email Notification
11-20-2007	Notice -- Defective Appeal Brief
08-29-2007	Date Forwarded to Examiner
08-28-2007	Defective / Incomplete Appeal Brief Filed
08-28-2007	Appeal Brief Filed
08-28-2007	Request for Extension of Time - Granted
01-29-2007	Notice of Appeal Filed
01-29-2007	Request for Extension of Time - Granted
07-28-2006	Mail Final Rejection (PTOL - 326)
07-24-2006	Final Rejection
03-24-2006	Date Forwarded to Examiner
03-16-2006	Response after Non-Final Action
03-16-2006	Request for Extension of Time - Granted
11-14-2005	Mail Non-Final Rejection
09-16-2005	IFW TSS Processing by Tech Center Complete
08-06-2001	New or Additional Drawing Filed
08-24-2001	Information Disclosure Statement considered
08-22-2005	Non-Final Rejection
06-04-2005	Date Forwarded to Examiner
05-12-2005	Response to Rule 105 Required for Information Filed
03-10-2005	Mail Independent Rule 105 Communication
03-07-2005	Requirement under Rule 105 - Independent Communication
12-28-2004	Date Forwarded to Examiner
11-05-2004	Response to Election / Restriction Filed
11-05-2004	Workflow incoming amendment IFW



10-04-2004	Mail Restriction Requirement
09-30-2004	Requirement for Restriction / Election
07-02-2004	Case Docketed to Examiner In GAU
01-07-2004	Correspondence Address Change
11-18-2002	Case Docketed to Examiner in GAU
01-24-2002	Case Docketed to Examiner in GAU
01-24-2002	Case Docketed to Examiner in GAU
01-17-2002	Case Docketed to Examiner in GAU
01-17-2002	Case Docketed to Examiner in GAU
01-16-2002	Case Docketed to Examiner in GAU
01-16-2002	Case Docketed to Examiner in GAU
11-26-2001	Case Docketed to Examiner in GAU
08-24-2001	Information Disclosure Statement (IDS) Filed
08-24-2001	Information Disclosure Statement (IDS) Filed
03-09-2001	Case Docketed to Examiner in GAU
02-12-2001	Application Dispatched from OIPE
02-12-2001	Correspondence Address Change
12-09-2000	IFW Scan & PACR Auto Security Review
11-10-2000	Initial Exam Team nn

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